

Judicial Activism in Environmental Legislation in India

ShreeRam Saini

Research Scholar (MPCET-2015) in Law at Maharaja Ganga Singh University, Bikaner

ARTICLE DETAILS

Article History

Published Online: 10 November 2018

Keywords

Environment Protection, Judiciary, Indian Constitution

ABSTRACT

"A nation that destroys its soils destroys itself. Forests are the lungs of our land, purifying the air and giving fresh strength to our people."

—Franklin D. Roosevelt

Earth is the only place for humans in this universe, it is our heritage, which we have to preserve for future generations so that our existence can remain in this universe and for this environmental protection is very important. Nature was given the status of a goddess in every civilization and culture of the world, a glimpse of this is also seen in the religions of the present day. Over time, humans exploited nature in the name of development, which resulted in imbalances in the basic components of the climate and polluting the environment.

The impact of climate impurity began to directly affect the entire human world and a law was needed to protect it. Some provisions of environmental protection were included in the Indian Constitution and some other statutes. Through the Stockholm Conference, many countries of the earth came to a platform for climate conservation and after that, the boost of environmental law started in India and after 1980, the judiciary played a major role in environmental protection in India. From time to time, the Court formulated important guidelines and principles for climate conservation and strengthened the environmental jurisprudence in India.

1. Introduction

Creation is a precious gift of nature. Here one element is subordinate on another and connected. Homo sapien are the most intelligent beings in nature. The speciality of man is that he is a rational being. Rationality invites both development and destruction. By the midpoint of the twentieth century, the world had suffered the horrors of two wars and had also seen the impact of the industrial revolution on the climate. Due to the priority of the climate, global attention was attracted to the measures of climate protection and determination of the responsibilities of environmental pollution on the earth.

The environment is borrowed from the French word *Environer* which means the surrounding environment. The environment is the total of all external conditions and the influence on the developmental cycle of biotic elements over the earth's surface.ⁱ The environment is a complex pattern of physical, chemical and biological factors on which the ecosystem of animals depends and is a determinant of its form and existence.ⁱⁱ The Environment (Protection) Act, 1986 defined the Environment to mean to include water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and propertyⁱⁱⁱ.

The spirit of climate conservation was given wide importance in the ancient culture of India. It was the Dharma of every individual to assure and worship nature. Several Puranas and Smritis it is stated that cutting trees is a punishable offence.^{iv} In present era, the Stockholm Declaration was probably the first humanitarian effort made internationally for environmental safeguard. Its main objective was to prepare guidelines for international institutions and states for the safeguard and development of the human environment. 119 countries participated in this conference and the spirit of the

same earth was accepted. In this conference 26 principles related to environmental safeguard and improvement and economical global cooperation have been established.

The international measures are linked with the efforts of national legislatures all over the world consisting of statutes remodelling the existing environmental laws. India does not lag and has passed and constantly amended the existing environmental laws to suit the changing conditions. The general enactments for climate safeguard contained in the Indian Penal Code, Indian Constitution etc. were tailored by specific laws in response to the Stockholm Declaration of 1972. In 1976, the Indian Constitution was amended by the forty-two-amendment making specific provisions for environmental safeguard and improvement in the form of Fundamental Duty under Article 51A (g)^v and the Directive Principle under Article 48A.^{vi} Moreover, the right to a healthy environment is protected by Article 21^{vii} of the India Constitution. India to implement the decisions taken as Stockholm, enacted Major Acts, namely The Air (Prevention and Control of Pollution) Act, 1981, The Water (Prevention and Control of Pollution) Act, 1974 and Environment (Protection) Act, 1986 to provide for prevention and control of pollution and improvement of Environment and other are The Wild Life (Protection) Act, 1972, The National Environmental Appellate Authority Act, 1997, The National Environment Tribunals Act, 1995 and The Biodiversity Act 2002 etc. These specific Acts have supported the Indian Penal Code, 1860, Cr.PC. 1973, the Easement Act, C.P.C. and other such outmoded legislations.

Thusly, because of numerous endeavours made at the worldwide level, the Indian assembly likewise presented numerous laws in the country so ecological assurance should be possible. In this manner, in antiquated and current India, legitimate endeavours were made to ensure the climate.

2. The Evolution of Environmental Jurisprudence:

In India, judicial activism about the environment started in the eighties, the progress of environmental justice activism slowed down but the judiciary participated very actively in environmental protection and gave many historical decisions which known as milestones in environmental protection. Public interest litigation is the most popular and effective for environmental pollution prevention and control and remedial treatment process. Public interest litigation is a element of the legal aid revolution so that justice can be provided within the reach of the poor.

First of these cases, which is still the Magna Carta of the ecological statute for recognition of the public right to decent living was established in **Municipal Council, Ratlam^{viii}** case by Justice V.R. Krishna Iyer. The start of legal activism in the Environment in India began with this case. **Rural Litigation and Entitlement Kendra, Dehradun^{ix}** Supreme Court express that a wholesome environment is Fundamental Right. **Bhopal gas leak disaster case^x** woke up the entire country to the threats of environmental devaluation and loss of life. **The Vellore Citizens Welfare Forum^{xi}** is a landmark decision recognizing 'Sustainable Development' as an answer to balance development with ecology. **Chaman Lal Sahu v. UOI^{xii}**, the Hon'ble Supreme Court expressly taken that the right to life, liberty, pollution-free air and water is guaranteed by the Constitution under Articles 21, 48A, 51A (g). The State should find viable ways to ensure the ensures sacred rights.

The long line of cases, thereafter, protecting Taj Mahal from pollution **M.C. Mehta Case^{xiii}**, protecting Yamuna river in **News Item 'Hindustan Times' A.Q.F.M. Yamuna^{xiv}**; restricting smoking out in the open spots in **Murli S. Deora^{xv}**, **M.C. Mehta v. Union of India^{xvi}** guideline of the total obligation set somewhere around Hon'ble Supreme Court. The court by further broadening the extent of Article 21 held that the endeavour is carefully and responsibly to redress, no exemption. **Indian Council for Enviro-Legal Action v. Union of India^{xvii}** Hon'ble Supreme Court applied the standard of Polluter pays and noticed hence: the polluter pays rule requests that the monetary expenses of forestalling or curing harm brought about by contamination should lie with the endeavours which caused the contamination, or delivered the products which caused the contamination. In **M.C. Mehta v. Kamalnath^{xviii}** the doctrine of public trust laid by the Hon'ble Supreme Court, the court proclaiming that nature's assets are regular to all are the fundamental highlights of a practical turn of events and numerous such matters have immovably settled ecological law in India.

3. National Green Tribunal

NGT is an exceptional legal body set up for the protection of forests, preservation of timberlands and matters identified with characteristic assets just as authorization of natural legitimate rights, help and remuneration identified with people and property and for powerful and quick removal of all or related issue. In the case of **Bhopal Gas Peedith Women Industry Organization v. Union of India^{xix}**, the Hon'ble Supreme Court moved all dynamic and future natural issue to the NGT to give brisk and master judgment and to keep away from the chance of contention of orders between the High Courts and the NGT. Further, the Supreme Court encouraged the High Courts in its circumspection to move the ecological cases

recorded before the requirement of the National Green Tribunal Act to the Tribunal.

The NGT was constituted by the National Green Tribunal Act, 2010 on 18 October 2010. New Delhi is its main bench and its operation started on 5 May 2011. It was formed in India to develop national laws on the environment and enforce these laws effectively. The NGT has the ability to hear all thoughtful cases identifying with natural issues and questions that are connected to the execution of laws recorded in Schedule I of the NGT Act. These include the following:

- The Water (Prevention and Control of Pollution) Act, 1974;
- The Air (Prevention and Control of Pollution) Act, 1981;
- The Forest (Conservation) Act, 1980;
- The Environment (Protection) Act, 1986;
- The Public Liability Insurance Act, 1991;
- The Biological Diversity Act, 2002.

4. Conclusion

The Supreme Court of India and the High Courts have assumed a significant part in the advancement of ecological law. From the genuine appraisal, apparently, the Indian courts have satisfied public laws just as global responsibilities identified with the climate with incredible mindfulness. Aside from a case like Union Carbide, the court has managed ecological issues at a fast speed. Because of chief and authoritative inaction, the court needed to do those things which are not in fact and customarily under the purview of the court. The legal executive, through its choices and standards, has incorporated the privilege to a solid climate under the domain of the key right under Article 21 of the Constitution. To make this privilege open to each resident, the idea of a public interest suit has been extended.

It is obvious from the above portrayal that the legal executive has assumed the part of a vigilante guard dog in the matter of natural security. Judicial activism has played its important role to activate the executive and legislature and has made environmental protection an integral issue of every person's life.

References

- ⁱ M.J. Herskovits, Man and His Work, 1948
- ⁱⁱ Encyclopaedia of Britannica
- ⁱⁱⁱ Section 2(a) of The Environment (Protection) Act, 1986
- ^{iv} J.J.R. Upadhyaya: Environmental Law 2017 edition
- ^v To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.
- ^{vi} Protection and improvement of environment and safeguarding of forests and wild life the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.
- ^{vii} No person shall be deprived of his life or personal liberty except according to procedure established by law.
- ^{viii} AIR 1980 SC 1622
- ^{ix} AIR 1985 SC 652
- ^x Union Carbide Corporation v. Union of India Etc. AIR 1990 273

- ^{xi} AIR 1996 SC 2715
- ^{xii} AIR 1990 SC 1480
- ^{xiii} AIR 1999 SC 734
- ^{xiv} AIR 2000 SC 3510
- ^{xv} AIR 2002 SC 40
- ^{xvi} AIR 1987 SC 1086
- ^{xvii} AIR 1996 SC 1446
- ^{xviii} (1997)1 SCC 388
- ^{xix} (2012)8 SCC 326,347